
(1994) 04 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 19690 and 19994 of 1986

Mohammad Saddiq

APPELLANT

Vs

IVth Additional District Judge and Others

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 16(1)

Citation : (1994) 2 AWC 1048

Hon'ble Judges : A.B. Srivastava, J

Bench : Single Bench

Advocate : B.D. Mandhyan and Vinod Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

A.B. Srivastava, J.—Both these writ petitions are interconnected, in so far as these are directed against the same judgment and order. By his order, dated 21-8-1986, the respondent No. 1, Additional District Judge, Kanpur, in an appeal, u/s 22 of Act 13 of 1972, hereinafter referred as the Act" partly allowed and partly rejected at release application, filed by the landlord. While the Writ Petition No. 19690 of 1986 has been preferred by the tenant, Writ Petition No. 19994 of 1986, by the landlord.

2. The release application was filed by the landlord Majid Husain, hereinafter referred as the landlord, for eviction of the tenant Mohd Sadiq, hereinafter referred as the tenant, in respect of a portion of House No. 79/117 Bans Mandi, Kanpur. Admittedly, both the landlord and the tenant are residing in two portions of the House No, 79/117 Bans Mandi. Kanpur. The allegation in the release application was to the effect that the ground floor portion of the said house, consisting of two rooms, three kothris, two verandahs, besides kitchen, bath and latrine, was in the possession of the tenant on Rs. 9.37 rent, whereas, the first

floor, consisting of two rooms, three kothris, two verandahs, kitchen and lavatory, is in the occupation of the landlord and his family. The family of the landlord consisted, besides him, of his wife, four sons and five daughters, total eleven. Two of the sons are employed and two sons and two daughters were under education. The accommodation in the occupation of the landlord and his family is quite insufficient for their needs of proper living and proper studies of the children. The marriage of the grown-up sons is also due. Accordingly, the landlord's requirement of the portion in the occupation of the tenant is genuine, bona-fide and pressing. The petition was contested by the tenant with allegation that more accommodation than that alleged in the release application is in the possession of the landlord and his family, and the same is quite sufficient for their needs. The marriage of none of the petitioners sons has been settled and the alleged requirement on account of the same does not exist. The tenant is a man of low income and his son also does not earn enough. His family consists, besides him, of his wife and three children also, as such, they will suffer hardship if the release is allowed.

3. The Prescribed Authority by his judgment and order, dated, 3-8-1982, rejected the release application. On appeal preferred u/s 22 of the Act by the landlord, the learned appellate authority allowed release of one room out of the two rooms on the ground floor in favour of the landlord while upholding the rejection of the prayer of release in respect of the rest of the accommodation in possession of the tenant. While the tenant has challenged the release of part of accommodation, the landlord has challenged the refusal to release the rest.

4, These petitions filed as far back in 1986, have not so far been admitted. Since affidavits have been exchanged between the parties in these writ petitions in accordance with the Rules of the Court, these are being finally disposed of at admission stage.

5. The contention on behalf of the tenant in these writ petitions is that the appellate authority without recording specific finding about bonafide requirement of the landlord and his family was not justified in releasing part of the accommodation and that he has wrongly stated in the judgment that the tenant agreed to vacate one room out of the accommodation in his possession. The contention of the other side is that from the facts and records as well as the observations of the appellate authority, the bonafide requirement of the landlord is fully established and the total accommodation in the possession of the tenant should have been released. It has also been contended that there was a clear offer during the proceedings before the appellate authority on behalf of the tenant by his Counsel, that he was willing to spare one room for the use of the landlord's family.

6. As far as the question of bonafide need of the landlord and his family is concerned, the judgment of the appellate authority, though not happily worded, does go to indicate that he found need for additional accommodation of the landlord and his family " to be bonafide and genuine. In this regard, he took

notice of the number of family members and also that, that two of the sons of the landlord are quite grown-up and of marriageable age. It was not necessary in order to seek release of additional accommodation that the marriage had already been settled. In fact, prior arrangement of additional accommodation for the couples, would in such circumstances be a requirement precedent to the settlement and performance of marriage. It could also be not lost sight of that the family consisted of school and college going children also. To say that such children could live or pursue their day-to-day studies in store rooms or verandahs, was simply preposterous, and no credence could have been given to such a submission. Simply because the appellate authority in the concluding paragraph of his judgment stated at one place that he does not find any discrepancy in the order of the trial court, it does not mean that he has endorsed the finding about lack of bonafide need of the landlord. This fact will be clear from the next sentence after the above observation, which runs as follows-

The trial court has held that the accommodation in possession of the landlord is sufficient still as the landlord has two marriageable sons, his need may not genuine and bonafide at present yet the landlord may need one room shortly for accommodating his sons and their wives, if any, who may come in the home later.

7. In view of the above facts and circumstances, therefore, there is no scope for conclusion that the appellate authority has not held the need of the landlord to be bonafide and genuine or has endorsed the conclusions of the Prescribed Authority in totality. The order of the learned appellate authority, thus, does not suffer from any error apparent on the face of record, it does not suffer from any manifest error of law, nor can his conclusions be termed as perverse or unsupported by the material on record. The release of the part of accommodation in favour of the landlord, thus, does not suffer from any illegality and cannot be questioned on the grounds set forth in his writ petition by the tenant.

8. Now, as to the grievance of the landlord that total accommodation should have been released also, it would be found that the learned appellate authority has taken a reasonable view in so far as he has allowed one of the two living rooms to the family of the landlord for their occupation. In so doing, naturally he had in mind the fact that the daughters of the landlord, in due course would be married and, thus, ceasing to be the members of the family of the landlord. In fact, the partial release, of the accommodation in favour of the landlord by the appellate authority is also in conformity with the provisions of Rule 16(1)(d) of the Rules, framed under the Act.

9. As to the exception sought to be taken by the tenant to the observation in the judgment of the appellate authority about his having agreed to vacate one room in favour of landlord, also it would be found from the facts recorded in the order-sheet of the appeal, as quoted in para 19 of the counter affidavit, in Writ Petition No. 19690 of 1986, that the said offer was a result of talk of compromise between the two sides. No doubt, an affidavit has been filed by the counsel

appearing on behalf of the tenant in the said appeal denying that offer in the nature stated was made, but the same has been rebutted by the affidavit of the counsel of the other side and, as already said above, also, from the record maintained in the order-sheet. The Contention that the counsel could have no authority to make such a concession on behalf of the tenant is also untenable, as it is not his case that such authority was not given to the counsel in the vakalatnama in the lower court. The impugned order of release of part accommodation, thus, cannot be assailed even on this ground.

10. No doubt in the order of the appellate authority the specific room out of the two rooms to be vacated is not specified, but it does not vitiate the order, because it will be open to the tenant to earmark one of the two rooms for the purpose, and in case he would fail to so do within the time fixed by the Prescribed Authority on being moved by the landlord, the offer could be taken to be about the outermost of the two rooms. For this purpose, a remand would not be just or expedient.

11. In view of all the above stated facts and circumstances, therefore, there being no flaw in the impugned order of the respondent No. 1, the same deserves to be affirmed and both these writ petitions deserve to be dismissed.

12. Both the writ petitions are, accordingly, dismissed. The interim order is hereby vacated.